

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
ENVIRONMENTEL LLC)	See Attachment A for Calls Signs and
)	Associated FCC File Nos.
Applications for Extension of the Five Year)	
Construction Deadlines)	
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Order

Adopted: March 20, 2014

Released: March 20, 2014

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this order, we address a request by Environmental LLC ("Environmental") to extend the five-year construction deadlines for certain of its 220 MHz licenses.¹ Specifically, Environmental seeks more than forty-five additional months to meet its construction obligations in order to consolidate its 220 MHz license construction deadline with the construction deadline of other license holdings.² For the reasons outlined below, we deny Environmental's request for extension and notify Environmental that its authorization for the subject licenses terminated automatically as of March 19, 2013.

II. BACKGROUND

2. The licenses at issue were granted in 2007 as part of Auction 72.³ Pursuant to Section 90.767 of the Commission's rules, an Economic Area ("EA") or Regional Economic Area Grouping ("REAG") 220 MHz licensee must construct a sufficient number of base stations for land mobile and/or paging operations to "provide coverage to at least one-third of the population of its EA or REAG within five years

¹ See Environmental LLC, Request for Extension of 5-Year Construction Deadline ("Extension Request"), filed March 19, 2013. See Attachment A for associated FCC file numbers. The licenses were granted on March 19, 2008, and the construction deadlines were March 19, 2013.

² Extension Request at 3.

³ See Auction of Phase II 220 MHz Service Spectrum Licenses Closes, *Public Notice*, 22 FCC Rcd 11573 (2007). The Licenses were acquired in the name of AMTS Consortium, which changed its name to Environmental. See, e.g., ULS, Environmental LLC, Administrative Update, File No. 0003649470 (2008).

of the issuance of its initial license and at least two-thirds of the population of its EA or REAG within ten years of the issuance of its initial license.”⁴ Alternately, licensees may provide substantial service to their licensed area at the appropriate five-year and ten-year benchmarks.⁵ Further, pursuant to Section 1.946(c), “[i]f a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires.”⁶

3. On March 19, 2013, Environmental filed requests for extension of the five-year construction deadline set forth in Section 90.767(a) of the Commission’s rules⁷ for its licenses (“Extension Request”).⁸ Environmental seeks an extension of the licenses’ five-year construction deadline until December 29, 2016,⁹ which is the construction deadline for the Automated Maritime Telecommunications System (“AMTS”) licenses Environmental and Intelligent Transportation & Monitoring Wireless LLC (“ITL”) won in Auction 61.¹⁰ Environmental argues that it requires the extension of its five-year deadline so that it can implement a joint business plan (along with Telesaurus VPC, LLC (“Telesaurus”), Verde Systems, LLC (“Verde”), ITL, V2G LLC (“V2G”), and Skybridge Spectrum Foundation (“Skybridge”))¹¹ that represents the highest and best use of the spectrum.¹² Environmental states that this joint plan has taken years to develop and will require until the date requested in the Extension Request for commencement of on-air systems.¹³ Environmental also argues that the equipment needed to implement this plan only recently has become available.¹⁴ In addition, Environmental asks that special consideration be given to the fact that it plans to assign a significant portion of its spectrum to Skybridge, “a non-profit, public benefit foundation,” arguing that the transfer would be in the public interest.¹⁵

III. DISCUSSION

4. Under Section 1.946(e) of the Commission’s rules, an extension of time to complete construction “may be granted if the licensee shows that the failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond its control.”¹⁶ Section 1.946 also lists

⁴ 47 C.F.R. § 90.767(a). For consistency, we refer to this as the “construction requirement” or “construction deadline.”

⁵ *Id.*

⁶ 47 C.F.R. § 1.946(c).

⁷ 47 C.F.R. § 90.767(a).

⁸ *See* Extension Request.

⁹ *Id.* at 1.

¹⁰ *See* Auction of Automated Maritime Telecommunications System Licenses Closes, *Public Notice*, 20 FCC Rcd 13747 (2005).

¹¹ We note for the record that Warren C. Havens (“Warren Havens”) is the president of Environmental and is a signatory to the Extension Request. Warren Havens also is president of Environmental’s affiliated entities Telesaurus, Verde, ITL, V2G, and Skybridge. We refer to these affiliated entities jointly as the “Havens Affiliates.”

¹² This plan requires the combined use of the Havens Affiliates’ AMTS licenses, M-LMS licenses, and certain low-band VHF licenses obtained in Auction No. 87 by ITL and V2G. *See* Extension Request at 2.

¹³ *See* Extension Request at 5.

¹⁴ *See id.*

¹⁵ Environmental states that it has legally committed to assigning 80% of the spectrum in the Licenses to Skybridge, and that this assignment is subject to grant of the Extension Request, “without which the Licenses will terminate and the assignment will not be possible.” Extension Request at 2.

¹⁶ *See* 47 C.F.R. § 1.946(e).

specific circumstances where extension requests will not be granted, including delays caused by a failure to obtain financing, because the license undergoes a transfer of control, or because the licensee fails to order equipment in a timely manner.¹⁷ The applicable extension standard must be considered in conjunction with Section 309(j) of the Communications Act, as amended, which states that the Commission shall include performance requirements to ensure prompt delivery of services, to prevent stockpiling and warehousing of spectrum by licensees, and to promote investment and deployment of new technologies and services.¹⁸

A. Extension of All Construction Deadlines

5. As discussed below, after careful review of the record and considering all of the relevant circumstances, we deny Environmental's Extension Request. Specifically, we find that Environmental has not demonstrated that an extension of time to construct is warranted or in the public interest. Rather, we find that Environmental's failure to meet its construction obligations is due to voluntarily decisions to pursue a business plan based upon unsupported technology instead of obtaining equipment and meeting its obligations as intended under the Commission's rules. We find that the arguments raised by Environmental do not justify an extension of the construction deadline for its licenses, and we believe that granting the Extension Request would undermine the fundamental goals of the Commission's performance requirements, specifically the promotion and rapid deployment of services to the public and the prevention of spectrum warehousing.¹⁹

6. As an initial matter, we find that Environmental has failed to meet the requirements of Section 1.946(e), which requires licensees to show that the "failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond the licensee's control."²⁰ In fact, Environmental fails to even address the extension standard specified in the Commission's rules and instead creates its own criteria by which it believes its licenses should be granted relief of their regulatory obligations.²¹ Additionally, Environmental's argument that it could not procure its desired equipment is the epitome of the excluded circumstances in Section 1.946(e), namely because the licensee fails to order equipment in a timely manner.²²

7. In particular, Environmental contends that it merits a 45-month extension to implement an "LTE-like technology (OFMD, cognitive radio based, multi-band, with multiple-channel aggregation, smart antennas, etc.) in the lower narrow bands (in this joint plan, principally 217-222 MHz)" in "support of [F]ederal and other government goals of smart transport, smart energy, and environmental-protection systems, or any of these" with its 220 MHz licenses. Regardless of whether Environmental's proposal is technologically or economically viable, Environmental has made a business decision to not construct its licenses with available equipment. Instead, Environmental chose to seek a long-term extension to pursue a business plan that is unsupported in the equipment market for the 220 MHz service, which is made up of narrowband 5 kHz channels.

¹⁷ See 47 C.F.R. § 1.946(e)(2)-(3).

¹⁸ See 47 U.S.C § 309(j)(4)(B).

¹⁹ See 47 U.S.C § 309(j)(4)(B).

²⁰ See 47 C.F.R. § 1.946(e).

²¹ Environmental states that "the extension criteria is satisfied since grant will allow the Licenses to be place into service on a timely basis for the highest and best use, since due diligence has been extensively performed, and due to the commitments of the licensee, accepted by [Skybridge], to assign 80% of the spectrum to a [sic] [Skybridge] for nonprofit support of governments' critical goals and programs. . . ." Extension Request at 8.

²² See 47 C.F.R. § 1.946(e)(2).

8. Environmental argues that “there has not been to this day in 220-222 MHz viable mobile two-way radio systems with acceptable quality voice technology and equipment,” while also acknowledging that “it is true that in more recent years some equipment companies have provided data radios in the subject 220-222 MHz range, some of which use 5 kHz wide channels.” Environmental argues, however, that this equipment is not “desirable.”²³ This demonstrates Environmental’s knowledge that equipment was available to begin providing service under its licenses, but that it chose not to while it waited for equipment it deemed more “desirable.” We find that equipment was available for use in the 220 MHz band prior to the construction deadlines.

9. Environmental also voluntarily decided on a business plan that requires coordination with several other entities (also run by Warren Havens), utilizing various types of licenses with different regulatory requirements, in a wide range of spectrum bands with differing construction deadlines. Such a business plan can greatly increase the complexity of equipment and present engineering challenges that can hinder the development and affordability of viable equipment. The Commission consistently has found that voluntary business decisions are not circumstances beyond the licensee’s control within the meaning of Section 1.946 and, as such, do not constitute a valid basis for regulatory relief.²⁴ In addition, prior to the 220 MHz auctions, the Commission stated that:

[t]he Commission makes no warranties about the use of this spectrum for particular services. Applicants should be aware that a Commission auction represents an opportunity to become a Commission licensee in this service, subject to certain conditions and regulations. A Commission auction does not constitute an endorsement by the Commission of any particular services, technologies, or products, nor does a Commission license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.²⁵

10. Indeed, participants in Auction 72 received clear notice that they would be expected to meet the construction requirements set forth in the Commission’s rules, regardless of the business plans or strategies they ultimately chose to pursue. Rather than taking advantage of the equipment options in the 220 MHz band to provide actual service to the public, Environmental made a voluntary business decision to pursue alternate technologies and rely on an extension of its construction deadlines. While Environmental may desire to provide a specific service across multiple bands using technology that is not supported in the bands, the unavailability of the specific type of equipment required to support its chosen

²³ See Extension Request at 6.

²⁴ See, e.g., Redwood Wireless Minnesota, LLC, *Order*, 17 FCC Rcd 22416 (WTB-CWD 2002) (construction delays resulting from business disputes were exercise of business judgment and were not outside Petitioner’s control); Eldorado Communications LLC, *Order*, 17 FCC Rcd 24613 (WTB-CWD 2002) (licensee’s determination to initially deploy TDMA system and subsequently to adopt GSM with months remaining before construction deadline was business decision within its control); Bristol MAS Partners, *Order*, 14 FCC Rcd 5007 (WTB-PSPWD 1999) (equipment installation or delivery not delayed for some unique reason and licensee failing to obtain equipment was business decision); AAT Electronics Corporation, 93 FCC 2d 1034 (1983) (decision not to market service aggressively because of equipment uncertainties is within licensee’s control); Business Radio Communications Systems, Inc., 102 FCC 2d 714 (1985) (construction delay caused by zoning challenge not a circumstance beyond licensee’s control); Texas Two-Way, Inc., 98 FCC 2d 1300 (1984), *aff’d sub nom.*, *Texas Two-Way, Inc. v. FCC*, 762 F.2d 138 (D.C. Cir. 1985) (licensee is responsible for delay resulting from interference caused by construction adjacent to construction site because site selection was an independent business decision); Letter dated May 6, 2011 from Thomas Derenge, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Dean S. Kozel, Longhorn Communications Inc., 26 FCC Rcd 6716 (WTB-MD 2011); Letter dated June 26, 2009 from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau to David G. Boyle, 24 FCC Rcd 8600 (WTB-MD 2009).

²⁵ See Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 10943 ¶ 19 (1997) (“*Third Report and Order*”).

business model does not constitute valid grounds for an extension under the Commission's rules. Licensees are free to investigate, invest in, and pursue a wide range of technologies and service options; regulatory compliance, however, is ultimately demonstrated by material accomplishments in the use of the spectrum resource to provide service.²⁶ Otherwise, licensees wishing to warehouse spectrum and undermine the purpose of the Commission's rules simply could keep changing their business plan to an unsupported model and attempt to argue that the situation is beyond their control.

11. Warren Havens, the president of Environmental, has been a 220 MHz license holder since 1999 and had made numerous filings before the Commission about the best use and technology to deploy for 220 MHz licenses. In 2004, Warren Havens sought an extension of his construction deadline because narrowband voice equipment was not readily available for 220 MHz licenses, so the Wireless Telecommunications Bureau ("Bureau") released a *Memorandum Opinion and Order*²⁷ extending the five-year construction deadlines by three years.²⁸ In 2007 and 2009, Warren Havens again sought extended implementation deadlines for 220 MHz licenses held by entities under his control to implement Intelligent Transportation Services.²⁹ Now, Warren Havens again seeks an extended construction deadline of more than 45 months to implement the latest iteration of his business plan using 220 MHz licenses. Throughout this period, other 220 MHz licensees have been able to identify business plans supported by available equipment or work with manufacturers to develop equipment in order to meet their construction obligations, whereas organizations controlled by Warren Havens merely have updated their business plans to include new concepts and ideas and file for regulatory relief based on arguments that there is no equipment to support these ideas.

12. As a beneficiary of the *220 MHz Extension Order*, and in fact the impetus of it, Warren Havens should be well aware of the availability of equipment, but, instead of conforming his business plan to achieve service, he has amended it to include new ideas that are not supported by equipment

²⁶ See 47 C.F.R. § 90.767(a).

²⁷ See Warren C. Havens, Bizcom USA, and Cornerstone SMR, *Memorandum Opinion and Order*, 19 FCC Rcd 12994 ¶ 19 (2004) ("*220 MHz Extension Order*"). The Commission issued the *220 MHz Extension Order* in response to Extension Requests filed by Warren Havens for his 220 MHz licenses. See Warren Havens, Petition to Waive or Extend the Five-Year Construction Requirement: Partial Waiver of Section 90.767, with requests to apply to other Regional and EA Licenses (Jan. 12, 2004). Warren Havens argued, in part, that extension or waiver of the construction requirement was justified due to a lack of appropriate equipment available for use in the 220 MHz band. The Bureau found that the public interest would be served by granting 220 MHz licensees, including Warren Havens, this extension and that an additional three years would be sufficient time for the licensees to construct their systems using available or soon to be released equipment. *Id.* at ¶ 20.

²⁸ In 2004, when the Bureau granted a three year extension, the *220 MHz Extension Order* noted that there were several factors that would allow 220 MHz licensees to effectively develop and use their licenses in the near term, prior to the extended deadline. Specifically, the Bureau cited to comments in the record that indicated that: (1) new digital equipment could be made available in the near term; (2) licensees were aggregating multiple 5 kHz channels to utilize 12.5 kHz equipment that was already available in the band; and (3) that the flexibility provided in the 1997 restructuring of the 220 MHz service rules would allow licensees to take advantage of a wide variety of new uses of the band, including fixed data applications. *Id.* at ¶¶ 16-18; see also *Third Report and Order*.

²⁹ See Warren Havens and Telesaurus VPC LLC, Petition to Waive or Extend the Five-Year Construction Requirement (filed November 4, 2007); Warren Havens and Telesaurus VPC, Supplement to Pending 220-222 MHz Extension Requests (filed June 27, 2008); Warren C. Havens Regional and EA Licenses, Amendment of Pending 2007 Petition to Waive or Extend the Five-Year Construction Requirement and the Ten-Year Construction Requirement (filed March 23, 2009); Warren C. Havens and Verde Systems LLC, Fee Waiver and Refund Request, Amendment to Pending Extension Requests Due to Lack of FCC Decision On It, Request for One "Ten Year" Construction Deadline of October 7, 2015, and Supportive Showing for Amended Extension Requests, Renewal Expectancy Showing for Renewal Applications for all the Subject Licenses (filed October 7, 2009); Warren Havens, Verde Systems LLC, and Skybridge Spectrum Foundation, Supplement to Extension and Renewal Applications (filed September 23, 2010).

manufacturers or other 220 MHz licensees. Accordingly, while several licensees have implemented services with their 220 MHz licenses or transferred them to other licensees that have identified viable business plans for the 220 MHz licenses, Environmental has made a voluntary decision to pursue unsupported service and technology concepts and seek extended implementation deadlines rather than meet its regulatory obligations.

13. In addition, Environmental argues that ten years is the proper construction deadline for its 220 MHz licenses because the Commission has given a ten-year construction deadline to other services such as AMTS (which it claims is easier to construct than a 220 MHz license). Additionally, because Environmental plans to use its 220 MHz licenses along with the Havens Affiliates' AMTS spectrum, it contends the licenses require the same deadline.³⁰ This argument is without merit. First, we note that this argument regarding 220 MHz construction rules has been raised before by Warren Havens and has been denied.³¹ The Commission deliberately has created separate rules for each of the services it oversees and has determined the construction deadlines for each of these services purposefully. In the 220 MHz band, the Commission determined that a five-year construction deadline was most appropriate.³² Environmental also states that our rules do not require licensees to "build a license and the spectrum involved only on a market-by-market basis, and only using that particular spectrum."³³ This argument also is faulty. While the Commission does not forbid licensees from using their various licenses and spectrum holdings in concert with each other, by the plain reading of rules, each license has independent requirements and we do require a separate construction showing for each license, even if held by the same entity.³⁴ Here, Environmental has chosen a business plan based upon unsupported technology that prevents it from building each license independently, which does not constitute a factor beyond its control.

14. Environmental also argues that the Commission should grant its Extension Request because of its proposed transfer of 80% of its spectrum to SkyBridge, a Warren Havens-controlled non-profit foundation that supports "advance wireless for smart transportation, smart energy and environmental-protection systems."³⁵ This transfer, however, simply is another business decision that Environmental has made, and Environmental does not cite any precedent by which we have accepted a licensee's contribution of spectrum to a non-profit entity as a way to meet our Section 1.946 standard.

15. Environmental additionally argues that the Commission should grant its Extension Request because we previously granted an extension in 2009 to another 220 MHz licensee, PTC-220, LLC ("PTC-220").³⁶ Environmental argues that its Extension Request is "more compelling in the public interest than the FCC grant of PTC 220 LLC extension request."³⁷ We disagree. The circumstances cited by

³⁰ Extension Request at 5.

³¹ Warren Havens raises this argument for 220 MHz licenses in his 2004 extension request, which was denied and again in his 2007 extension requests. *See, e.g.*, extension requests attached to ULS File Nos. 0001664792 and 0003222964. *See also*, 220 MHz Extension Order at ¶ 20, 19 FCC Rcd 13002.

³² *See* Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, *Report and Order*, 6 FCC Rcd 2356, 2365 ¶¶ 65-69 (1991); 220 MHz Extension Order.

³³ Extension Request at 3.

³⁴ *See* 47 C.F.R. § 90.767(a). *See also* FCI 900, Inc. Expedited Request for 3-Year Extension of 900 MHz Band Construction Requirements, *Memorandum Opinion and Order*, 16 FCC Rcd 11072, 11082 ¶ 18 (2001). *See generally* FCI 900, Inc. Expedited Request for 3-Year Extension of 900 MHz Band Construction Requirements, *Order on Reconsideration*, 17 FCC Rcd 16092 (2002).

³⁵ Extension Request at 2-3.

³⁶ Extension Request at 6-7. At the time, PTC-220's members included two of the nation's Class I freight railroads. Today, PTC-220's members include all seven Class I freight railroads.

³⁷ *Id.* at 6.

Environmental are unlike those that warranted the relief granted to PTC-220. In the *PTC-220 Order*, the Bureau found that PTC-220's request was uniquely founded on its railroad members' legal obligation to deploy life-saving interoperable, positive train control systems as directed by Congress in the Rail Safety Improvement Act of 2008 as part of a nationwide, long-term strategy for improving railroad safety.³⁸ Citing the unique Congressional mandate and noting that the railroads would file their PTC implementation plans for approval by the Federal Railroad Administration in 2010, after the applicable construction deadline, the Bureau found that an extension of time to enable implementation of PTC systems would serve the public interest, particularly the Commission's statutory mandate of "promoting safety of life and property through the use of wire and radio communications."³⁹ The Bureau also required PTC-220 to file regular progress reports to ensure the spectrum would be used intensively for PTC implementation.⁴⁰

16. Finally, Environmental argues that the Commission systematically has treated Warren Havens and the Havens Affiliates unfairly.⁴¹ Warren Havens has made this argument repeatedly in his various filings, and we consistently have rejected it.⁴² Despite Environmental's arguments to the contrary, our findings here are consistent with our treatment of other 220 MHz licensees that sought long-term relief from their construction deadlines. In these cases, we denied licensees' requests for extensions based largely on the fact that viable equipment was available and that other licensees had effectively used that equipment to meet their construction requirements and begin providing service within their license areas.⁴³

³⁸ See In the Matter of Request of PTC-220, LLC for Waivers of Certain 220 MHz Rules, *Memorandum Opinion and Order*, 24 FCC Rcd 8537, 8542 (2009) ("*PTC-220 Order*"). The Rail Safety Improvement Act of 2008 requires certain freight, passenger, and commuter railroads to install and operate PTC systems by December 31, 2015. See Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, § 104, 122 Stat. 4848, 4857 (2008). PTC-220 was formed to facilitate the development and deployment of interoperable PTC systems in the United States to benefit both freight and commuter rails. See, e.g., Wireless Telecommunications Bureau Seeks Comment on Request for Waiver to Facilitate Deployment of Positive Train Control Systems, *Public Notice*, 28 FCC Rcd 2243, 2243 (2013). To serve this purpose, PTC-220 acquired and now holds licenses in the 220 MHz band, including four nationwide licenses. See *id.*

³⁹ *PTC-220 Order* at 8543.

⁴⁰ *Id.* at 8544-8546.

⁴¹ Extension Request at 7-8. Environmental states that "... [Environmental] submits that, but for FCC prejudicial action, contrary to FCC and other law and the public interest, with regard to [Environmental] and the [Havens Affiliates], that it could have by this date commenced operation on the subject Licenses, and this is further good cause for grant of this Request." *Id.* at 7. Environmental cites as examples: "the ten year M-LMS rule making that continues to this day which effectively quashes development and use of the M-LMS in the markets (cannot proceed without finalization of core rules); FCC unequal and unfair treatment of the [Havens Affiliates] including [Environmental] that applied for and obtained some AMTS licenses in comparison to other AMTS licensees (applying to the [Havens Affiliates] rule 80.475(a) (1999) strictly, or overly harshly, but not applying it at all to the competing AMTS applicants and licensees); and concocting a rule that does not exist to allow a competitor to outbid, with false bidding credits, [Environmental] and a co-controlled LLC in Auction 61 (ultra vires rule change of rule 1.2105) (this is on appeal); and concocting a rule that does not exist to deny renewal of Skybridge's 220 MHz licenses donated to it as charitable grants (this is on appeal)." *Id.* at 7-8.

⁴² See, e.g., CGG Veritas Land, Inc., *Memorandum Opinion and Order*, 26 FCC Rcd 2493, 2494 ¶ 4 (2011); Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Memorandum Opinion and Order*, 25 FCC Rcd. 5008, 5011 ¶ 6 (2010); Mobex Network Services, LLC, *Memorandum Opinion and Order*, 25 FCC Rcd 3390, 3395-96 ¶ 11 (2010); Warren Havens, Jimmy Stobaugh, Intelligent Transportation & Monitoring Wireless LLC, Skybridge Spectrum Foundation, & AMTS Consortium LLC, *Memorandum Opinion and Order*, 24 FCC Rcd 12308, 12311-13 ¶¶ 6-9 (2009).

⁴³ See, e.g., Letter dated June 26, 2009, from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Nancy J. Douglas, Douglas SMR Works, Inc., 24 FCC Rcd 8596 (WTB-MD 2009); Letter dated June 26, 2009, from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Robert LaRue, Know LaRue Separate Property Trust, 24 FCC Rcd 8621 (WTB-MD 2009); Letter dated June 26,

(continued....)

We also note that where a Havens' Affiliate has demonstrated that an extension is warranted, we have acted favorably on those requests.⁴⁴

17. Warren Havens and the Havens Affiliates have held a significant number of 220 MHz licenses since 1999 without providing any service; Environmental now seeks an additional forty-five months to meet its regulatory obligation due to a lack of equipment for a business plan that appears to have continually evolved since 1999 to include concepts that are unsupported in the equipment market. The Commission's rules are designed to recover and reassign unused or underutilized spectrum to prevent spectrum warehousing, except in those limited instances where it is demonstrated that more time is warranted.⁴⁵ In this case, the Commission requires that 220 MHz licenses be operating within five years of license grant, not the ten years Environmental contends should apply. We find that an extension here would undermine the purpose of the Commission's rules and would not be in the public interest. Given their history, Warren Havens and Environmental fully knew the regulatory requirements (as well as any technological challenges or equipment challenges that 5 kHz channels may present) of the 220 MHz licenses when they chose to obtain them in Auction 72. Nevertheless, Environmental now seeks a long-term extension for its 220 MHz licenses while also failing to present any factors that would warrant an extension under section 1.946 of the Commission's rules.

18. The Bureau is charged with exercising its judgment to determine if it is in the public interest to continue to allow licensees to keep their licenses, consistent with the Commission's rules, policies and goals for the use of this public resource. In our judgment, more time is not warranted by the demonstration provided; Environmental made a business decision to obtain its licenses and had adequate time to provide service, but it chose instead not to build and seek more time. If granted, the extensions would result in a significant portion of the 220 MHz band remaining fallow across the country for at least three years entirely due to Environmental's voluntary decision to pursue alternate technologies instead of deploying existing equipment within its license areas.

19. Accordingly, we find that: (1) Environmental has not provided actual service in their license areas; (2) this failure was not caused by circumstances beyond its control; (3) the claimed due diligence, conceptual plans, or other factors described in Environmental's filings do not support an extension of the construction deadline; (4) Environmental has presented no compelling precedent or evidence to support its request for special considerations based on its prospective assignment of spectrum to Skybridge; and (5) allowing Environmental to continue to hold these Licenses without constructing facilities or providing any actual service would undermine the purpose of the Commission's rules and Section 309(j) of the Communications Act.⁴⁶

B. Extension of the E Block Construction Deadlines

20. In the alternative to granting extensions for all of Environmental's Licenses listed in Attachment A, Environmental requests that the Commission grant extensions of the five-year construction

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2009, from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Kansas City Wireless Partners, LLP, 24 FCC Rcd 8625 (WTB-MD 2009); Letter dated June 26, 2009, from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to David G. Boyle, 24 FCC Rcd 8600 (WTB-MD 2009).

⁴⁴ See e.g., *220 MHz Extension Order*; Re: Multilateration Location and Monitoring Service Construction Requirements, *Order on Reconsideration and Memorandum Opinion and Order*, 22 FCC Rcd. 1925 (January 31, 2007); and Extension Letter grant attached to FCC File No. 0003430268 (March 15, 2012).

⁴⁵ See 47 U.S.C § 309(j)(4)(B).

⁴⁶ See Letter dated May 6, 2011, from Thomas Derenge, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Dean S. Kozel, Longhorn Communications Inc., 26 FCC Rcd 6716 (2011) (finding that an Extension Request based on the licensee's pursuit of alternate business plans could undercut the public interest if it is not supported by evidence that such business plans could be accomplished in the near term).

deadline for only the E Block licenses, as set out in Attachment B. Environmental argues that, as these specific E Block licenses “can use 12.5 kHz, 25 kHz, and somewhat wider channel technology,” Environmental should be able to use Digital Mobile Radio (“DMR”) and Terrestrial Trunked Radio (“TETRA”) equipment, which “will probably soon be available in lower 200 MHz, according to reports directly given to the undersigned by equipment companies at the 2013 IWCE event [March 11th - 15th, 2013] in Las Vegas.”⁴⁷

21. As detailed in Section III(A) of this order, Environmental made a voluntary business decision to pursue technologies and business strategies that were unsupported by the existing equipment ecosystem and we do not typically grant licensees relief from their construction requirements for the consequences of voluntary business decisions. Moreover, Environmental’s belief that DMR and TETRA equipment will “probably” be available “soon” does not change the fact that it chose to rely on technology that is not yet available. Therefore, for the reasons set forth above, the Extension Request, including the alternative proposal to extend only the construction deadlines for the E Block licenses, is denied and the Licenses automatically terminated on March 19, 2013.⁴⁸

IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 0.131, 0.331, 1.946(c) and (e), 1.955(a)(2), and 90.767 of the Commission’s Rules, 47 C.F.R. §§ 0.131, 0.331, 1.946(c), 1.946(e), 1.955(a)(2), and 90.767 that the Extension Request for the licenses listed in Attachment A IS HEREBY DENIED. Accordingly, all licenses listed in Attachment A TERMINATED AUTOMATICALLY ON MARCH 19, 2013.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Derenge
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁴⁷ Extension Request at 8. Environmental states that it will supplement the Extension Request after it receives written confirmations. *Id.* We note that no such filings have been made.

⁴⁸ See 47 C.F.R. § 90.767(c).

Attachment A

Call Sign	Block	Market	File Number
WQIM611	D	BEA002	0005698199
WQIM612	E	BEA002	0005698200
WQIM613	E	BEA005	0005698201
WQIM614	E	BEA006	0005698202
WQIM615	D	BEA009	0005698203
WQIM616	B	BEA011	0005698204
WQIM617	D	BEA013	0005698205
WQIM618	B	BEA017	0005698206
WQIM620	D	BEA019	0005698207
WQIM621	E	BEA019	0005698208
WQIM622	B	BEA021	0005698209
WQIM623	C	BEA021	0005698210
WQIM624	E	BEA022	0005698211
WQIM625	E	BEA024	0005698212
WQIM626	E	BEA025	0005698213
WQIM627	B	BEA030	0005698214
WQIM628	E	BEA041	0005698215
WQIM629	E	BEA043	0005698216
WQIM630	E	BEA046	0005698217
WQIM631	E	BEA050	0005698218
WQIM632	C	BEA051	0005698219
WQIM633	E	BEA051	0005698220
WQIM634	E	BEA052	0005698221
WQIM635	B	BEA055	0005698222
WQIM636	C	BEA055	0005698223
WQIM637	D	BEA055	0005698224
WQIM638	E	BEA060	0005698225
WQIM639	E	BEA068	0005698226
WQIM640	E	BEA069	0005698227
WQIM641	A	BEA073	0005698228
WQIM642	C	BEA073	0005698229
WQIM643	A	BEA074	0005698230
WQIM644	E	BEA074	0005698231
WQIM645	E	BEA075	0005698232
WQIM646	B	BEA083	0005698233
WQIM647	C	BEA083	0005698234
WQIM648	D	BEA083	0005698235
WQIM649	D	BEA084	0005698236
WQIM650	A	BEA085	0005698237
WQIM651	D	BEA086	0005698238
WQIM652	C	BEA087	0005698239
WQIM653	A	BEA138	0005698240
WQIM654	C	BEA164	0005698241

Attachment B

Call Sign	Block	Market	File Number
WQIM612	E	BEA002	0005698200
WQIM613	E	BEA005	0005698201
WQIM614	E	BEA006	0005698202
WQIM621	E	BEA019	0005698208
WQIM624	E	BEA022	0005698211
WQIM625	E	BEA024	0005698212
WQIM626	E	BEA025	0005698213
WQIM628	E	BEA041	0005698215
WQIM629	E	BEA043	0005698216
WQIM630	E	BEA046	0005698217
WQIM631	E	BEA050	0005698218
WQIM633	E	BEA051	0005698220
WQIM634	E	BEA052	0005698221
WQIM638	E	BEA060	0005698225
WQIM639	E	BEA068	0005698226
WQIM640	E	BEA069	0005698227
WQIM644	E	BEA074	0005698231
WQIM645	E	BEA075	0005698232